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In re Application of:	:	
MATTHIJSSE, Pieter, et al.	:	
U.S. Application No.: 10/509,684	:	
PCT No.: PCT/NL03/00261	:	COMMUNICATION
International Filing Date: 07 April 2003	:	REGARDING SUBMISSION
Priority Date: 10 April 2002	:	UNDER 37 CFR 1.42
Attorney's Docket No.: 260119US6PCT	:	
For: METHOD AND DEVICE FOR	:	
MANUFACTURING OPTICAL PREFORMS, AS	:	
WELL AS THE OPTICAL FIBRES OBTAINED	:	
THEREWITH	:	

This communication is issued in response to applicants' submission on 18 August 2005 of a declaration that identifies one of the inventors as deceased. The submission is treated herein as a submission under 37 CFR 1.42.

### **BACKGROUND**

On 07 April 2003, applicants filed international application PCT/NL03/00261 which claimed a priority date of 10 April 2002 and which designated the United States. On 23 October 2003, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB"). The deadline for payment of the basic national fee was thirty months after the priority date, i.e. 12 October 2004 (10 October 2004 was a Sunday and 11 October 2004 was a federal holiday in the United States).

On 12 October 2004, applicant filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 18 April 2005, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification Of Missing Requirements (Form PCT/DO/EO/905)" indicating that an oath or declaration in compliance with 37 CFR 1.497 was required.

On 18 August 2005, applicants filed a response to the Notification Of Missing Requirements (with the necessary two-month extension fee). The response included a declaration executed by four of the five inventors. The declaration included an unsigned signature block for the remaining inventor, Henrikus Lambertus Maria JANSEN, and it was accompanied by a death certificate (with English translation) stating that the non-signing inventor had died on 01 August 2004.

### DISCUSSION

37 CFR 1.42 states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Section 409.01(a) of the Manual of Patent Examining Procedure (MPEP) states that the application can also be executed by all of the heirs of the deceased inventor, where no legal representative has been appointed or is required to be appointed by law.

37 CFR 1.497(b)(2) states the following:

(2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

Pursuant to 37 CFR 1.497(b)(2), the citizenship, mailing address, and residence information for **both** the deceased inventor and the legal representative (or all the heirs, if applicable) must be included in the declaration.

The declaration filed by applicants on 18 August 2005 does not comply with 37 CFR 1.42 and 1.497(b)(2) in that it has not been executed on behalf of the deceased inventor by the deceased inventor's legal representative (or by all the heirs of the deceased inventor, if appropriate). Accordingly, the declaration cannot be accepted under 37 CFR 1.497 and 1.42.

### CONCLUSION

For the reasons discussed above, the request for status under 37 CFR 1.42 is **DISMISSED** without prejudice.

Applicants have **TWO (2) MONTHS** from the mailing date of this communication to submit a proper response under 37 CFR 1.42 and 37 CFR 1.497. Failure to provide a proper and timely response will result in abandonment. Extensions of time are available under 37 CFR 1.136(a).

A proper response must include an oath or declaration executed on behalf of the deceased inventor in compliance with 37 CFR 1.42 and including all the information required under 37

CFR 1.497 (including the citizenship, mailing address, and residence information for **both** the deceased inventor and the legal representative, as discussed above,.

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration

A handwritten signature in black ink, appearing to read 'RM Ross', written in a cursive style.

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